

STATE OF WISCONSIN
DEPARTMENT OF COMMERCE

**NOTICE OF PUBLIC HEARING
AND
HEARING DRAFT OF PROPOSED RULES**

NOTICE IS HEREBY GIVEN that pursuant to sections 101.573 (5) and 101.574 (4) (a) 1. of the statutes, the Department of Commerce will hold a public hearing on proposed rules under section Comm 14.02 relating to definitions of administrative expenses and substantial compliance.

The public hearing will be held as follows:

Date and Time:

Wednesday
July 28, 2004
Commencing at 9:30 a.m.

Location:

Thompson Commerce Center, Third Floor, Room 3B
201 West Washington Avenue
Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until August 2, 2004, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. All written comments should be sent by e-mail to srockweiler@commerce.state.wi.us. If e-mail submittal is not possible, written comments may be addressed to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Luann Robb at (608) 266-5824 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

File Reference: Comm 14/Hearing Notice219b



State of Wisconsin \ Department of Commerce

HEARING DRAFT OF PROPOSED RULES

Rule No.:

Section Comm 14.02

Relating to:

Definitions of Administrative Expenses and

Substantial Compliance

ORDER OF THE DEPARTMENT OF COMMERCE

CREATING RULES

The Wisconsin Department of Commerce proposes an order to renumber Comm 14.02 (1) to (9), and to create Comm 14.02 (1) and (11), relating to definitions of administrative expenses and substantial compliance.

ANALYSIS OF PROPOSED RULES

Statutory Authority and Statutes Interpreted

Statutory Authority: ss. 101.573 (5) and 101.574 (4) (a) 1., Stats.

Statutes Interpreted: ss. 20.143 (3) (La), 101.14, 101.141, 101.573, and 101.575, Stats.

Summary

Under sections 101.14, 101.141, 101.573, and 101.575 of the Wisconsin statutes, the Department protects public health, safety, and welfare by promulgating rules for and administering fire inspection and prevention programs. Those programs include a Fire Dues program which is funded by fees from insurance companies, and which provides annual grants to city, village, and town fire departments for performing fire inspection and prevention services. Under 101.573 (5) and 101.574 (4) (a) 1. of the statutes, as established in 2003 Wisconsin Act 219, the Department is required to promulgate rules that (1) define its "administrative expenses" in the Fire Dues program, and (2) define the "substantial compliance" that the Department looks for in determining whether a local unit is eligible for a grant from the Fire Dues program.

Federal Programs

An Internet-based search of existing and proposed federal regulations did not identify any that address a fire dues program funded by fees from insurance companies.

Programs in Adjacent States

The four adjacent states were included in an e-mail survey of all State Fire Programs, that asked each State whether they collect a fee from insurance companies to help with fire prevention and suppression. Although responses were received from four other States, Illinois, Iowa, Michigan, and Minnesota did not respond, so the Department presumes the adjoining States do not have a fire dues program and corresponding rules that are similar to Wisconsin's.

Data and Analysis of Impacts on Small Business

The proposed rules (1) codify the Department's current designation of which of its expenses are administrative expenses and (2) extend the Department's current practice of looking for "substantial compliance," to also apply to determinations of whether local units annually inspect enough public buildings and places of employment, for fire prevention purposes. This extension would not reduce the current duty of local units to annually inspect 100 percent of public buildings and places of employment, but would provide more flexibility in determining whether that duty has been met, so as to establish eligibility for a Fire Dues grant. Consequently, these rules are not expected to result in significant impacts on small businesses.

File reference: Comm 14/Analysis

SECTION 1. Comm 14.02 (1) to (9) are renumbered Comm 14.02 (2) to (10).

SECTION 2. Comm 14.02 (1) and (11) are created to read:

Comm 14.02 (1) "Administrative expenses," for the purposes of s. 20.143 (3) (La), Stats., include all expenses related to the department's operations under ss. 101.14, 101.141 and 101.573, Stats. In addition, administrative expenses include all expenses deemed appropriate or directed by the secretary of the department of administration.

Note: Under section 20.143 (3) (La) of the statutes, the department receives funding from the state fire fund for expenses incurred in performing or administering the fire-prevention-related activities and duties specified in sections 101.14, 101.141 and 101.573 of the statutes.

(2) "Substantial compliance," means an ample amount of the required activity was performed through a concerted effort aimed at total compliance. A determination of substantial compliance is obtained through a common-sense approach to evaluating whether enough effort was made to comply with the applicable statute or code requirements. Substantial compliance is not a specific number or percent of compliance. A determination of substantial compliance in any one year or regulatory standard does not mean that the same amount of compliance or effort in the following year or in another area of the code automatically equals substantial compliance.

Note: Under section 101.575 (4) (a) 1. of the statutes, the Department may not pay fire department dues to a city, village, town or fire department, unless the Department determines that the city, village, town or fire department is in substantial compliance with sections 101.575 (6) and 101.14 (2) of the statutes.

Section 101.575 (6) of the statutes reads as follows: "(a) No city, village or town maintaining a fire department under this section may use any dues received s. 101.573 and this section for any purpose except the direct provision of the following:

1. The purchase of fire protection equipment.
2. Fire inspection and public education.
3. Training of fire fighters and fire inspectors performing duties under s. 101.14.
4. To fund wholly or partially fire fighters' pension funds or other special funds for the benefit of disabled or superannuated fire fighters.

(b) Any city, village or town that contracts for fire protection service shall give dues received under s. 101.573 and this section to the fire department providing the fire protection service. That fire department shall use those dues for any of the purposes specified in par. (a)."

Section 101.14 (2) of the statutes reads as follows: "(a) The chief of the fire department in every city, village or town, except cities of the 1st class, is constituted a deputy of the department, subject to the right of the department to relieve any such chief from duties as such deputy for cause, and upon such suspension to appoint some other person to perform the duty imposed upon such deputy. The department may appoint either the chief of the fire department or the building inspector as its deputy in cities of the 1st class.

(b) The chief of every fire department shall provide for the inspection of every public building and place of employment to determine and cause to be eliminated any fire hazard or any violation of any law relating to fire hazards or to the prevention of fires.

1. Except as provided under subd. 2, the chief of every fire department shall provide that the inspections required under par. (b) be made at least once in each nonoverlapping 6-month period per calendar year in all of the territory served by his or her fire department. The chief of a fire department may require more frequent inspections than required under this

subdivision. The department by rule shall provide for general exceptions, based on the type of occupancy or use of the premises, where less frequent inspections are required. Upon written request by the chief of a fire department, the department by special order may grant an exception to a city, village or town to conduct less frequent inspections than required under this subdivision.

2. In 1st class cities, the fire chief may establish the schedule of fire inspections in that city. The fire chief shall base the frequency of the inspections on hazardous classification, the proportion of public area, the record of fire code violations, the ratio of occupancy to size and any other factor the chief deems significant. Property other than residential property with 4 dwelling units or less shall be inspected at least once annually.

(cm) In addition to the requirements of pars. (b) and (c), a fire department shall provide public fire education services.

(d) The chief of every fire department, or, in 1st class cities, the building inspector appointed by the department under par. (a), shall designate a sufficient number of inspectors to make the inspections required under pars. (b) and (c).

(e) Written reports of inspection shall be made and kept on file by the authority having jurisdiction to conduct inspections, or its designee, in the manner and form required by the department.

(f) Every inspection required under pars. (b) and (c) is subject to the supervision and direction of the department, which shall, after audit, certify to the commissioner of insurance after the expiration of each calendar year each city, village or town where the inspections for the year have been made, and where records have been made and kept on file as required under par. (e)."

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin administrative register.
